

Department of Veterans Affairs

§ 3.383

chapter and requests VBA make a determination on questions that include, but are not limited to, any of the following:

- (1) Former Prisoner of War status;
 - (2) Whether the veteran has a compensable or noncompensable service-connected dental condition or disability;
 - (3) Whether the dental condition or disability is a result of combat wounds;
 - (4) Whether the dental condition or disability is a result of service trauma; or
 - (5) Whether the veteran is totally disabled due to a service-connected disability.
- (b) Treatable carious teeth, replaceable missing teeth, dental or alveolar abscesses, and periodontal disease are not compensable disabilities, but may nevertheless be service connected solely for the purpose of establishing eligibility for outpatient dental treatment as provided for in §17.161 of this chapter. These conditions and other dental conditions or disabilities that are noncompensably rated under §4.150 of this chapter may be service connected for purposes of Class II or Class II (a) dental treatment under §17.161 of this chapter.
- (c) The rating activity will consider each defective or missing tooth and each disease of the teeth and periodontal tissues separately to determine whether the condition was incurred or aggravated in line of duty during active service.
- (d) In determining service connection, the condition of teeth and periodontal tissues at the time of entry into active duty will be considered. Treatment during service, including filling or extraction of a tooth, or placement of a prosthesis, will not be considered evidence of aggravation of a condition that was noted at entry, unless additional pathology developed after 180 days or more of active service.
- (e) The following principles apply to dental conditions noted at entry and treated during service:
- (1) Teeth noted as normal at entry will be service-connected if they were filled or extracted after 180 days or more of active service.
 - (2) Teeth noted as filled at entry will be service-connected if they were ex-

tracted, or if the existing filling was replaced, after 180 days or more of active service.

(3) Teeth noted as carious but restorable at entry will not be service-connected on the basis that they were filled during service. However, new caries that developed 180 days or more after such a tooth was filled will be service-connected.

(4) Teeth noted as carious but restorable at entry, whether or not filled, will be service-connected if extraction was required after 180 days or more of active service.

(5) Teeth noted at entry as non-restorable will not be service-connected, regardless of treatment during service.

(6) Teeth noted as missing at entry will not be service connected, regardless of treatment during service.

(f) The following will not be considered service-connected for treatment purposes:

- (1) Calculus;
 - (2) Acute periodontal disease;
 - (3) Third molars, unless disease or pathology of the tooth developed after 180 days or more of active service, or was due to combat or in-service trauma; and
 - (4) Impacted or malposed teeth, and other developmental defects, unless disease or pathology of these teeth developed after 180 days or more of active service.
- (g) Teeth extracted because of chronic periodontal disease will be service-connected only if they were extracted after 180 days or more of active service.

(Authority: 38 U.S.C. 1712)

[64 FR 30393, June 8, 1999, as amended at 77 FR 4470, Jan. 30, 2012]

§ 3.382 [Reserved]

§ 3.383. Special consideration for paired organs and extremities.

(a) *Entitlement criteria.* Compensation is payable for the combinations of service-connected and nonservice-connected disabilities specified in paragraphs (a)(1) through (a)(5) of this section as if both disabilities were service-connected, provided the nonservice-connected disability is not the result of the veteran's own willful misconduct.

- (1) Impairment of vision in one eye as a result of service-connected disability

and impairment of vision in the other eye as a result of non-service-connected disability and

(i) The impairment of vision in each eye is rated at a visual acuity of 20/200 or less; or

(ii) The peripheral field of vision for each eye is 20 degrees or less.

(2) Loss or loss of use of one kidney as a result of service-connected disability and involvement of the other kidney as a result of nonservice-connected disability.

(3) Hearing impairment in one ear compensable to a degree of 10 percent or more as a result of service-connected disability and hearing impairment as a result of nonservice-connected disability that meets the provisions of § 3.385 in the other ear.

(4) Loss or loss of use of one hand or one foot as a result of service-connected disability and loss or loss of use of the other hand or foot as a result of nonservice-connected disability.

(5) Permanent service-connected disability of one lung, rated 50 percent or more disabling, in combination with a nonservice-connected disability of the other lung.

(b) *Effect of judgment or settlement.* (1) If a veteran receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the nonservice-connected disability which established entitlement under this section, the increased compensation payable by reason of this section shall not be paid for any month following the month in which any such money or property is received until such time as the total amount of such increased compensation that would otherwise have been payable equals the total of the amount of any such money received and the fair market value of any such property received. The provisions of this paragraph do not apply, however, to any portion of such increased compensation payable for any period preceding the end of the month in which such money or property of value was received.

(2) With respect to the disability combinations specified in paragraphs (a)(1), (a)(2), (a)(3) and (a)(5) of this section, the provisions of this paragraph

apply only to awards of increased compensation made on or after October 28, 1986.

(c) *Social security and workers' compensation.* Benefits received under social security or workers' compensation are not subject to recoupment under paragraph (b) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

(d) *Veteran's duty to report.* Any person entitled to increased compensation under this section shall promptly report to VA the receipt of any money or property received pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the nonservice-connected loss or loss of use of the impaired extremity upon which entitlement under this section is based. The amount to be reported is the total of the amount of money received and the fair market value of property received. Expenses incident to recovery, such as attorneys' fees, may not be deducted from the amount to be reported.

(Authority: 38 U.S.C. 501(a), 1160)

CROSS-REFERENCES: § 3.385 Disability due to impaired hearing; § 4.85 Evaluation of hearing impairment.

[53 FR 23236, June 21, 1988, as amended at 69 FR 48149, Aug. 9, 2004; 74 FR 11483, Mar. 18, 2009]

§ 3.384 Psychosis.

For purposes of this part, the term "psychosis" means any of the following disorders listed in Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, of the American Psychiatric Association (DSM-IV-TR):

- (a) Brief Psychotic Disorder;
- (b) Delusional Disorder;
- (c) Psychotic Disorder Due to General Medical Condition;
- (d) Psychotic Disorder Not Otherwise Specified;
- (e) Schizoaffective Disorder;
- (f) Schizophrenia;
- (g) Schizophreniform Disorder;
- (h) Shared Psychotic Disorder; and